

SENATE BILL No. 140

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-14-5-9; IC 31-19; IC 35-46-1.

Synopsis: Adoption matters. Provides that a man who is barred from establishing paternity under the adoption statutes is prohibited from establishing paternity by filing a paternity action as next friend of the child or requesting a prosecuting attorney to file a paternity action. Prohibits a person who has executed a written consent to the adoption of a child by a certain person from executing a second or subsequent written consent to the adoption of the child by another person, unless certain conditions apply. Removes provision that allows a father who receives a notice of adoption after the birth of the child to contest the adoption by filing a paternity action. Removes provision under which the consent of a putative father to the adoption of a child is irrevocably implied if the putative father, after receiving a notice of adoption after the birth of the child, fails to file a paternity action. Provides that the putative father registry provisions do not apply if, on or before the date the child's mother executes a consent to the child's adoption, the child's mother discloses the name and address of the putative father to the attorney or agency that is arranging the child's adoption. Provides that a putative father's motion to contest an adoption must be filed in the court in which the adoption is pending. Prohibits a court from granting an adoption if a petitioner for adoption has been convicted of an attempt to commit certain felonies. Authorizes a child placing agency and an attorney to advertise certain adoption information only if licensed under Indiana law. Provides that the crime of unauthorized adoption facilitation does not apply to child placing agencies licensed under Indiana law or attorneys licensed to practice law in Indiana.
(Continued next page)

Effective: July 1, 2010.

Zakas, Broden

January 5, 2010, read first time and referred to Committee on Judiciary.



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Digest Continued

(Current law provides that the crime of unauthorized adoption facilitation does not apply to child placing agencies licensed under any state's law or attorneys licensed to practice law in any state.)

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 140

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-14-5-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 9. A man who is barred under IC 31-19 from**
4 **establishing paternity may not establish paternity by:**

5 (1) **filing a paternity action as next friend of a child; or**
6 (2) **requesting a prosecuting attorney to file a paternity action.**

7 SECTION 2. IC 31-19-4-4 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. Notice of the
9 adoption proceeding required under section 3 of this chapter shall be
10 given to an unnamed putative father in substantially the following
11 form:

12 "NOTICE TO UNNAMED FATHER
13 The unnamed putative father of the child born to _____ (mother's
14 name) on _____ (date), or the person who claims to be the father of the
15 child born to _____ (mother's name) on _____ (date), is notified that



a petition for adoption of the child was filed in the office of the clerk of _____ court, _____ (address of court).

If the unnamed putative father seeks to contest the adoption of the child, the unnamed putative father must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court ~~or a paternity action under IC 31-14~~ within thirty (30) days after the date of service of this notice. This notice may be served by publication.

If the unnamed putative father

(1) does not file

~~(A) a motion to contest the adoption or~~

~~(B) a paternity action under IC 31-14;~~

within thirty (30) days after service of this notice, ~~or~~

~~(2) after filing a paternity action under IC 31-14 fails to establish paternity;~~

the above named court shall hear and determine the petition for adoption. The unnamed putative father's consent is irrevocably implied and the unnamed putative father loses the right to contest the adoption or the validity of the unnamed putative father's implied consent to the adoption. The unnamed putative father loses the right to establish paternity of the child under IC 31-14.

Nothing _____ (mother's name) or any one else says to the unnamed putative father of the child relieves the unnamed putative father of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father.

This notice complies with IC 31-19-4-4 but does not exhaustively set forth the unnamed putative father's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes."

SECTION 3. IC 31-19-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. Notice of the adoption proceeding shall be given to:

(1) the putative father who is entitled to notice under section 1 or 2 of this chapter; or

(2) a named putative father under section 3 of this chapter;

in substantially the following form:

"NOTICE TO NAMED FATHER

_____ (putative father's name), who has been named the father of the child born to _____ (mother's name) on _____ (date), or who claims to be the father of the child born to _____ (mother's name) on _____ (date), is notified

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that a petition for adoption of the child was filed in the office of the clerk of _____ court, _____ (address of the court).

If _____ (putative father's name) seeks to contest the adoption of the child, he must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court ~~or a paternity action under IC 31-14~~ not later than thirty (30) days after the date of service of this notice.

If _____ (putative father's name)

(1) does not file

(A) a motion to contest the adoption ~~or~~

(B) a paternity action under IC 31-14;

within thirty (30) days after service of this notice, ~~or~~

(2) after filing a paternity action under IC 31-14 fails to establish paternity;

the above named court will hear and determine the petition for adoption. His consent will be irrevocably implied and he will lose his right to contest either the adoption or the validity of his implied consent to the adoption. He will lose his right to establish his paternity of the child under IC 31-14.

Nothing _____ (mother's name) or anyone else says to _____ (putative father's name) relieves _____ (putative father's name) of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father. For purposes of this notice, _____ (putative father's name) is a putative father under the laws in Indiana regarding adoption.

This notice complies with IC 31-19-4-5 but does not exhaustively set forth a putative father's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes."

SECTION 4. IC 31-19-5-1, AS AMENDED BY P.L.58-2009, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) This chapter applies to a putative father whenever:

(1) an adoption under IC 31-19-2 has been or may be filed regarding a child who may have been conceived by the putative father; and

(2) on or before the date the child's mother executes a consent to the child's adoption, the child's mother has not disclosed the name or address, or both, of the putative father to ~~an~~ the attorney or agency that is arranging the child's adoption.

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(b) This chapter does not apply if, on or before the date the child's mother executes a consent to the child's adoption, the child's mother discloses the name and address of the putative father to the attorney or agency that is arranging the child's adoption.

SECTION 5. IC 31-19-9-2, AS AMENDED BY P.L.145-2006, SECTION 251, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) The consent to adoption may be executed at any time after the birth of the child, either in the presence of:

- (1) the court;
- (2) a notary public or other person authorized to take acknowledgments; or
- (3) an authorized agent of:
 - (A) the department;
 - (B) a county office of family and children; or
 - (C) a licensed child placing agency.

(b) The child's mother may not execute a consent to adoption before the birth of the child.

(c) The child's father may execute a consent to adoption before the birth of the child if the consent to adoption:

- (1) is in writing;
- (2) is signed by the child's father in the presence of a notary public; and
- (3) contains an acknowledgment that:
 - (A) the consent to adoption is irrevocable; and
 - (B) the child's father will not receive notice of the adoption proceedings.

(d) A child's father who consents to the adoption of the child under subsection (c) may not challenge or contest the child's adoption.

(e) A person who executes a written consent to the adoption of a child may not execute a second or subsequent written consent to have another person adopt the child unless one (1) or more of the following apply:

- (1) Each original petitioner provides a written statement that the petitioner is not adopting the child.**
- (2) The person consenting to the adoption has been permitted to withdraw the first consent to adoption under IC 31-19-10.**
- (3) The court dismisses the petition for adoption filed by the original petitioner or petitioners for adoption based upon a showing, by clear and convincing evidence, that it is not in the best interests of the child that the petition for adoption be granted.**

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(4) The court denies the petition to adopt the child filed by the original petitioner or petitioners for adoption.

SECTION 6. IC 31-19-9-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. A putative father's consent to adoption is irrevocably implied without further court action if the putative father:

(1) fails to file

~~(A)~~ a motion to contest the adoption in accordance with IC 31-19-10 and

~~(B)~~ a paternity action under IC 31-14;

within thirty (30) days after service of notice under IC 31-19-4 in **the court in which the adoption is pending;**

(2) having filed a motion to contest the adoption in accordance with IC 31-19-10, fails to appear at the hearing set to contest the adoption;

(3) having filed a paternity action under IC 31-14, fails to establish paternity in the action; or

(4) is required to but fails to register with the putative father registry established by IC 31-19-5 within the period under IC 31-19-5-12.

SECTION 7. IC 31-19-11-1, AS AMENDED BY P.L.3-2008, SECTION 238, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Whenever the court has heard the evidence and finds that:

(1) the adoption requested is in the best interest of the child;

(2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;

(3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;

(4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;

(5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;

(6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:

(A) IC 31-19-6 indicating whether a record of a paternity determination; or

(B) IC 16-37-2-2(g) indicating whether a paternity affidavit

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1 executed under IC 16-37-2-2.1;
 2 has been filed in relation to the child;
 3 (7) proper consent, if consent is necessary, to the adoption has
 4 been given;
 5 (8) the petitioner for adoption is not prohibited from adopting the
 6 child as the result of an inappropriate criminal history described
 7 in subsection (c) or (d); and
 8 (9) the person, licensed child placing agency, or county office of
 9 family and children that has placed the child for adoption has
 10 provided the documents and other information required under
 11 IC 31-19-17 to the prospective adoptive parents;
 12 the court shall grant the petition for adoption and enter an adoption
 13 decree.

14 (b) A court may not grant an adoption unless the state department
 15 of health's affidavit under IC 31-19-5-16 is filed with the court as
 16 provided under subsection (a)(4).

17 (c) A conviction of a felony or a misdemeanor related to the health
 18 and safety of a child by a petitioner for adoption is a permissible basis
 19 for the court to deny the petition for adoption. In addition, the court
 20 may not grant an adoption if a petitioner for adoption has been
 21 convicted of any of the felonies, **or convicted of an attempt to**
 22 **commit any of the felonies**, described as follows:

- 23 (1) Murder (IC 35-42-1-1).
- 24 (2) Causing suicide (IC 35-42-1-2).
- 25 (3) Assisting suicide (IC 35-42-1-2.5).
- 26 (4) Voluntary manslaughter (IC 35-42-1-3).
- 27 (5) Reckless homicide (IC 35-42-1-5).
- 28 (6) Battery as a felony (IC 35-42-2-1).
- 29 (7) Domestic battery (IC 35-42-2-1.3).
- 30 (8) Aggravated battery (IC 35-42-2-1.5).
- 31 (9) Kidnapping (IC 35-42-3-2).
- 32 (10) Criminal confinement (IC 35-42-3-3).
- 33 (11) A felony sex offense under IC 35-42-4.
- 34 (12) Carjacking (IC 35-42-5-2).
- 35 (13) Arson (IC 35-43-1-1).
- 36 (14) Incest (IC 35-46-1-3).
- 37 (15) Neglect of a dependent (IC 35-46-1-4(a)(1) and
 38 IC 35-46-1-4(a)(2)).
- 39 (16) Child selling (IC 35-46-1-4(d)).
- 40 (17) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- 41 (18) A felony relating to controlled substances under IC 35-48-4.
- 42 (19) An offense relating to material or a performance that is

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harmful to minors or obscene under IC 35-49-3.

(20) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (19) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (12), (13), (17), or (18), or its equivalent under subdivision (20), if the offense was not committed within the immediately preceding five (5) year period.

(d) A court may not grant an adoption if the petitioner is a sex or violent offender (as defined in IC 11-8-8-5).

SECTION 8. IC 35-46-1-21, AS ADDED BY P.L.146-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 21. (a) Only a person that is an attorney licensed to practice law or a child placing agency licensed under the laws of ~~any state or the District of Columbia~~ **Indiana** may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

(1) a child is offered or wanted for adoption; or

(2) the person is able to place, locate, or receive a child for adoption.

(b) A person that publishes a telephone directory that is distributed in Indiana:

(1) shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law and licensed child placing agencies may legally provide adoption services under Indiana law; and

(2) may publish an advertisement described in subsection (a) in the telephone directory only if the advertisement contains the following:

(A) For an attorney licensed to practice law **in Indiana**, the person's attorney number.

(B) For a child placing agency licensed under the laws of ~~any state or the District of Columbia~~, **Indiana**, the number on the person's child placing agency license.

(c) A person who knowingly or intentionally violates subsection (a) commits unauthorized adoption advertising, a Class A misdemeanor.

SECTION 9. IC 35-46-1-22, AS AMENDED BY P.L.146-2008, SECTION 685, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. (a) As used in this section, "adoption services" means at least one (1) of the following services that is provided for compensation, an item of value, or reimbursement,

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either directly or indirectly, and provided either before or after the services are rendered:

- (1) Arranging for the placement of a child.
- (2) Identifying a child for adoption.
- (3) Matching adoptive parents with biological parents.
- (4) Arranging or facilitating an adoption.
- (5) Taking or acknowledging consents or surrenders for termination of parental rights for adoption purposes.
- (6) Performing background studies on:
 - (A) a child who is going to be adopted; or
 - (B) adoptive parents.
- (7) Making determinations concerning the best interests of a child and the appropriateness in placing the child for adoption.
- (8) Postplacement monitoring of a child before the child is adopted.

(b) As used in this section, the term "adoption services" does not include the following:

- (1) Legal services provided by an attorney licensed in Indiana.
- (2) Adoption related services provided by a governmental entity or a person appointed to perform an investigation by the court.
- (3) General education and training on adoption issues.
- (4) Postadoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(c) This section does not apply to the following persons:

- (1) The department of child services, an agency or person authorized to act on behalf of the department of child services, or a similar agency or county office with similar responsibilities in another state.
- (2) The division of family resources, an agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office with similar responsibilities in another state.
- (3) A child placing agency licensed under the laws of Indiana. ~~or another state.~~
- (4) An attorney licensed to practice law in Indiana. ~~or another state.~~
- (5) A prospective biological parent or adoptive parent acting on the individual's own behalf.

(d) A person who knowingly or intentionally provides, engages in, or facilitates adoption services to a birth parent or prospective adoptive parent who resides in Indiana commits unauthorized adoption

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1 facilitation, a Class A misdemeanor.

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